

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**LETTERS PATENT APPEAL No. 1625 of 2006
In
SPECIAL CIVIL APPLICATION No. 5529 of 2003
with
CIVIL APPLICATION No. 15045 of 2006
In
LETTERS PATENT APPEAL No. 1625 of 2006**

For Approval and Signature:

**HONOURABLE MR.JUSTICE A.M.KAPADIA
HONOURABLE MR.JUSTICE K.A.PUJ**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

**STATE OF GUJARAT & 3 - Appellant(s)
Versus**

PWD EMPLOYEES UNION & 6 - Respondent(s)

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Appearance :

MR MIHIR JOSHI, AAG with MR APURVA DAVE,
Assistant Government Pleader for Appellant(s) : 1
- 3.

MR SHALIN N MEHTA for Respondent(s) : 1 - 7.

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA**and****HONOURABLE MR.JUSTICE K.A.PUJ****Date : 09/05/2007****ORAL JUDGMENT****(Per : HONOURABLE MR.JUSTICE K.A.PUJ)**

1. The appellant – State of Gujarat and others have filed this Letters Patent Appeal under Clause-15 of Letters Patent challenging the order passed by the learned Single Judge of this Court on 14.6.2006 in Special Civil Application No.5529 of 2003 filed by PWD Employees Union and 6 others, which came to be allowed and the learned Single Judge has directed that the petitioners in the said Special Civil Application are entitled for the payments as stated in paragraph-6 of the

judgment as follows:-

"In the above facts and circumstances, the total amounts due under various heads, as calculated by joint exercise of the representatives of the parties and agreed to be correct, are as under and are required and directed to be paid latest by 30.9.2006."

<u>Under the Head of</u>	<u>Amounts (Rs.)</u>
L.T.C.	04,58,160/-
Group Insurance	07,07,625/-
Leave Encashment	12,27,002/-
(To be retired / expired employees)	
Surrender Leave	02,96,332/-
Transport Allowance	12,44,850/-
Public Holidays	41,31,730/-
Total	80,65,699/-

It was further directed by learned Single Judge that, "accordingly the aforesaid amounts shall be paid with interest @ 9% per annum from 01.09.2000 to the date of payment or 01.09.2000, which ever may be earlier. The principal amount due is quantified in paragraph -1 hereinabove, shall thereafter carry be penal interest @ 12% and shall be paid

accordingly if the payment is delayed beyond
01.09.2006”

2. The brief facts as revealed from the case record, giving rise to the present Letters Patent Appeal are as under :-

3. Special Civil Application No.3607 of 1982 was filed in this Court by PWD Employees Union and 6 daily-wagers (for and on behalf of 746 daily-wagers) belonging to the erstwhile Irrigation Department against the State of Gujarat, Superintending Engineer Incharge of the Ukai Civil Circle, etc, with a prayer to award benefits like Gratuity, Pension, Casual Leave, Earned Leave, Sick Leave, Scales and Grades, Public Holidays, Maternity Leave, Travel Allowances, Group Insurance etc, which were admissible to the other regular Government employees.

4. Special Civil Applications No.422 and 423 of 1983 were filed in this Court by PWD

Employees Union espousing the cause of the daily rated employees engaged in the Roads and Buildings Division of the State of Gujarat with a prayer to award benefits similar to the ones sought by the petitioners of Special Civil Application No.3607 of 1982.

5. Special Civil Application No.3607 of 1982 was disposed of by the learned Single Judge of this Court on 30.1.1996 giving a direction to pay certain benefits like;

“(A) In para-7 of the judgment, the Learned Single Judge directed payment of arrears of annual earned leave to the 638 employees (who were regularised as work charged by resolution dated 17.10.88 from the date on which they became regularized as work-charged.

(B) In para-6 of the judgment, the Learned Single Judge directed payment of pension and gratuity to all 746 employees for the entire service from the date on which they initially joined under the respondents.

(C) In the same para-6 of the judgment, the

Learned Single Judge directed payment of provident fund to all 746 work-charged employees as per G.R. Dated 30.5.89.

(D) In para-9 of the judgment, the Learned Single Judge directed payment of leave travel concession, travel allowance, group allowance and medical allowance to 638 work-charged employees from 1.1.95 inasmuch as the said benefits were given to the first batch of 108 work-charged employees, from 1.1.95 who were regularised as work-charged prior to 17.10.88."

6. Special Civil Applications No.422 and 423 of 1983 which were similar to Special Civil Application No.3607 of 1982, also came to be disposed of by the learned Single Judge with a direction to the State Government to make available the benefits directed in Special Civil Application No.3607 of 1982 to the employees concerned in Special Civil Applications No.422 and 423 of 1983.

7. Letters Patent Appeal No.353 of 1997 was

filed by the State Government challenging the decision dated 30.1.1996 passed by this Court in Special Civil Application No.3607 of 1982. However, no Appeal was filed by the State Government against the decision dated 30.1.1996 passed by this Court in Special Civil Applications No.422 and 423 of 1983. Letters Patent Appeal No.353 of 1997 filed by the State Government against the judgment and order of the learned Single Judge in Special Civil Application No.3607 of 1982 was dismissed by Division Bench of this Court on 22.4.1997 on both counts, namely, refusal to condone delay as well as on merit.

8. Being aggrieved by the said order of the Division Bench, Special Leave Petition under Article-136 of the Constitution of India was filed by the State Government in the Hon'ble Supreme Court of India. Leave was granted and the judgment dated 22.4.1997 passed in Letters Patent Appeal No.353 of 1997 was

stayed.

9. Civil Appeal No.2226 of 1998 arising out of the Special Leave Petition filed by the State Government against the judgment dated 22.4.1997 passed by the Division Bench of this Court, was dismissed by the Hon'ble Supreme Court of India on 9.8.2000. The interim stay granted earlier was vacated.

10. A written notice was addressed by the PWD Employees Union to the State Government and other concerned officials of the Roads and Buildings Department, seeking compliance of the final judgment dated 30.1.1996 passed by this Court in Special Civil Applications No.422 and 423 of 1983. Misc. Civil Applications No.413 and 414 of 2001 in Special Civil Applications No.422 and 423 of 1983 respectively for contempt were filed in this Court by the PWD Employees Union. Notice was issued by this Court to the appellant on

28.3.2001 in these applications calling upon them to explain as to why the final judgment dated 30.1.1996 passed by this Court in Special Civil Applications No.422 and 423 of 1983 was not being implemented. Review Petition No.622 of 2001 filed by the State Government for review of the order dated 9.8.2000 passed by the Hon'ble Supreme Court of India in Civil Appeal No.2226 of 1998 was dismissed on 25.7.2001. Affidavit-in-reply was filed by the appellant No.3 i.e. Executive Engineer, Roads and Buildings Circle, Surat in Misc. Civil Applications No.413 and 414 of 2001 (Contempt Petition) stating that the State Government needed a period of six months from February, 2002 to fully implement the final judgment dated 30.1.1996 passed by this Court in Special Civil Applications No.422 and 423 of 1983.

11. Special Civil Application No.7703 of 2002 was filed by PWD Employees Union for

implementation of the final judgment dated 30.1.1996 passed by this Court in Special Civil Application No.3607 of 1982. The said petition concerned the 746 work-charged employees of the erstwhile Irrigation Department. This Court has passed an order on 29.1.2003 in Special Civil Application No.7703 of 2002 recording the statement made by Mr.B.H.Chaudhari, Executive Engineer, Ukai Dam in para-5 of his affidavit-in-reply, that the arrears aggregating to Rs.2,11,86,306/- worked out by the department, had been forwarded further and was pending for the approval of the Secretary, Finance Department of the State Government. Special Civil Application No.7703 of 2002 was finally disposed of by the learned Single Judge in terms of the order dated 3.2.2003 passed by the Finance Department of the State Government whereby an amount of Rs.2,11,86,300/- was sanctioned by the State Government in compliance of the final

judgment dated 30.1.1996 passed by this Court in Special Civil Application No.3607 of 1982. Pursuant to the order dated 7.2.2003 passed by this Court in Special Civil Application No.7703 of 2002, the following amounts were paid by the State Government to the employees concerned in Special Civil Application No.3607 of 1982, of the erstwhile Irrigation Department, without any Caveat or objection.

Sr. No.	Head	Amount
1.	Amount of leave surrender.	Rs.04,63,891.00
2.	L.T.C.	Rs.04,93,021.00
3.	T.A/ Bills.	Rs.01,15,930.00
4.	Notional Period 1996-96	Rs.79,78,460.00
5.	Project Allowance 6/98 to 7/2002	Rs.15,03,484.00
6.	Transport allowance 4/99 to 7/2002	Rs.18,58,929.00
7.	Encashment of leave at the time of retirement & death.	Rs.11,79,379.00

Total Rs.1,36,29,094.00

12. The amount of Rs.75,57,212/- due under the head of 'Public Holidays' was not paid to the work-charged employees of the erstwhile Irrigation Department on the ground that the amount under the head of 'Public Holidays' was included in the total calculation by mistake. Therefore, Misc. Civil Application No.2239 of 2003 was filed by the State Government for modification of the order dated 7.2.2003 passed by this Court in Special Civil Application No.7703 of 2002 to include the amount of Rs.75,57,212/- calculated under the head of 'Public Holidays'. Thus, barring 'Public Holidays', the admissibility of the other 7 benefits was not disputed by the State Government.

13. Misc. Civil Application No.2239 of 2003 filed by the State Government was allowed by the learned Single Judge on 25.2.2004 and the

order dated 7.2.2003 passed by this Court in Special Civil Application No.7703 of 2002 was modified to the extent that in place of amount of Rs.2,11,86,306/- an amount of Rs.1,36,29,094/- was required to be disbursed in compliance of the final judgment dated 30.1.1996 passed by this Court in Special Civil Application No.3607 of 1982. For the 'Public Holidays' benefit, the PWD Employees Union was asked to make a representation to the State Government for encashment of the said benefit. The State Government was directed to consider such representation made to it in accordance with law.

14. Letters Patent Appeal No.1037 of 2004 was filed by the PWD Employees Union against the judgment dated 25.2.2004 passed by the learned Single Judge of this Court in Misc. Civil Application No.2239 of 2003 by which the encashment of 'Public Holidays' benefit to the tune of Rs.75,57,212/- was denied. A

Division Bench of this Court allowed the Letters Patent Appeal No.1037 of 2004 filed by the PWD Employees Union on 14.10.2004 and the judgment dated 25.2.2004 passed by the learned Single Judge in Misc. Civil Application No.2239 of 2003 was quashed and set aside. The members of the PWD Employees Union who are work-charged employees of the erstwhile Irrigation Department, were held entitled to encashment of 'Public Holidays' benefit to the tune of Rs.75,57,212/-.

15. Special Leave Petition No.3719 of 2005 was filed by the State Government against the decision dated 14.10.2004 passed by a Division Bench of this Court in Letters Patent Appeal No.1037 of 2004. The said Special Leave Petition was dismissed by the Hon'ble Supreme Court of India on 8.4.2005. As a result thereof sum of Rs.72,46,000/- was disbursed by the State Government to the work-charged employees of the erstwhile

Irrigation Department towards the 'Public Holidays' benefit.

16. So far as Special Civil Application No.5529 of 2003 filed in this Court on 25.4.2003 by the PWD Employees Union is concerned, it is filed for and on behalf of the 409 daily-wagers of the Roads and Buildings Department for implementation of the final judgment dated 30.1.1996 passed by this Court in Special Civil Applications No.422 and 423 of 1983. These 409 daily-wagers comprised of two groups, first group of 288 employees who were party to Special Civil Applications No.422 and 423 of 1983, and second group of 121 employees who were not party to Special Civil Applications No.422 and 423 of 1983. The said Special Civil Application No.5529 of 2003 had to be filed by the PWD Employees Union as the State Government had not fulfilled its commitments made in the proceedings of Misc. Civil

Applications No.413 and 414 of 2001 that the judgment dated 30.1.1996 passed by this Court in Special Civil Applications No.422 and 423 of 1983 would be fully implemented within a period of six months from February, 2002. Special Civil Application No.5529 of 2003 was finally disposed of in view of the statement made by the learned Assistant Government Pleader Mr.Pancholi on 9.4.2004. In view of the statement made by Mr.Pancholi that 'payment would be made to 288 employees of the Roads and Buildings Circle, Surat, as per the earlier order of this Court in Special Civil Application No.7703 of 2002 dated 7.2.2003, after making computation as required for the purpose within 4 weeks from the date of the order. A sum of Rs.44,44,380/- was paid to the first group of 288 employees of the Roads and Buildings Department under the head of 'Notional period for the year 1996-97'. Barring this, payment under the remaining 7 heads was not made. Two

letters dated 12.7.2004 and 20.8.2004 were sent by the PWD Employees Union to the State Government seeking compliance of the statement made on their behalf in the proceeding of Special Civil Application No.5529 of 2003 and which was recorded in the oral order dated 9.4.2004 passed by this Court in Special Civil Application No.5529 of 2003. Despite these two letters, nothing more was paid by the State Government to the 288 employees of the Roads and Buildings Department and hence the PWD Employees Union filed Misc. Civil Application No.2014 of 2004 seeking recall of the order dated 9.4.2004 by which Special Civil Application No.5529 of 2003 was disposed of. The said Misc. Civil Application No.2014 of 2004 was allowed by an order dated 16.3.2005 and the order dated 9.4.2004 was recalled and Special Civil Application No.5529 of 2003 was restored to its original number.

17. After hearing the rival parties, Special Civil Application No.5529 of 2003 was admitted by the learned Single Judge and by an order dated 14.6.2006 the said petition was partly allowed. The following amounts were directed to be paid by the learned Single Judge under order and judgment dated 14.6.2006.

<u>Under the Head of</u>	<u>Amount (Rs.)</u>
L.T.C.	4,58,160/-
Group Insurance	7,07,625/-
Leave Encashment	12,27,002/-
(To Retired/Expired Employees)	
Surrender Leave	2,96,332/-
Transport Allowance	12,44,850/-
Public Holidays	41,31,730/-
Total	<u>80,65,699/-</u> =====

18. In addition to the above, the Learned Single Judge awarded interest at the rate of 9% p.a for the period commencing from 1.9.2000 till the date of payment, on the

aforesaid amount of Rs.80,655,699/-. It was further directed that if the payment as directed was delayed beyond 1.9.2006, the State Government shall pay penal interest at the rate of 12% p.a. Separate direction was issued with regard to the claim of the second group of 121 employees of the Roads and Buildings Department.

19. In Misc. Civil Application No.2880 of 2006 (for contempt) filed by the PWD Employees Union in Special Civil Application No.5529 of 2003, the learned Government Pleader, on instructions, has stated that the undisputed amount of Rs.25 lacs that is deposited by the State Government in the Registry of this Court, be paid over to the PWD Employees Union in pursuance of the oral judgment dated 14.6.2006 passed by the learned Single Judge in Special Civil Application No.5529 of 2003.

20. It is in the above background of facts, events and various proceedings, the present Letters Patent Appeal is filed by the State Government and others.

21. Mr.Mihir Joshi, learned AAG appearing with Mr.Apurva Dave, learned Assistant Government Pleader, for the appellants has submitted that the learned Single Judge has erred in issuing direction for making the payment of quantified amount under various heads overlooking the fact that the members of the petitioner Union were not entitled to such payment at all under the relevant rules and regulations and such computation was subject to contention of the appellant State as recorded in the judgment itself. It is further submitted that the learned Single Judge has gravely erred in directing payment of interest on the amounts directed to be paid under the judgment. He has further submitted that the learned Single Judge has

completely overlooked the fact that the direction for payment of specific amounts ought not to have been issued on account of serious disputes of entitlement and quantification. He has further submitted that the learned Single Judge should not have entertained the petition which is purportedly for execution of earlier order in Special Civil Application No.3607 of 1982 and Special Civil Applications No.422 and 423 of 1983 and has further erred in overlooking the fact that the said earlier directions were for payments to be made as may be admissible under law and, therefore, ought not to have considered the matter as having been concluded or enforceable by way of execution thereof. He has further submitted that the learned Single Judge has erred in allowing the petition qua those employees, who were held, earlier, not entitled for benefits at par with the employees of Special Civil Application No.3607 of 1982 and

Special Civil Applications No.422 and 423 of of 1983.

22. Mr.Joshi has further submitted that 121 employees have been treated at par with the employees mentioned in Special Civil Applications No.422 and 423 of 1983 have never approached before this Court until year 2003 and, therefore, they cannot be treated at par with the employees before the Court. Their claim was never adjudicated about the admissibility or parity with employees covered under Special Civil Applications No.422 and 423 of of 1983. He has further submitted that the claim of 121 employees at par with the petitioners in Special Civil Applications No.422 and 423 of 1983 suffers from gross delay and latches and hence he ought not to have granted the same, vide impugned judgment.

23. Mr.Joshi has further submitted that the

benefits like Leave Travel Concession, Leave Encashment, Public Holidays, Travel Allowance, Group Insurance, Medical Allowance and Provident Fund are required to be given to the employees in accordance with rules and resolutions as decided vide judgment in Special Civil Application No.3607 of 1982. Meaning thereby, it has to be first decided that whether regular employees of Government, who are entitled for the benefits in cash and what is extent of admissibility of benefits according to rules and resolution. In para-9 itself, the learned Single Judge has held that so far as "claim of Leave Encashment, Public Holidays, Provident Fund are permissible under relevant rules and resolutions have already been dealt." The learned Single Judge has further observed that Mr.Master states that remaining other benefits, namely, Leave Travel Concession, Travel Allowance, Group Insurance and Medical Allowance are being made available to the

group of 108 employees. The learned Single Judge recorded the statement of Mr. Master that the remaining employees will be satisfied if these benefits are made available to them from 1.1.1995 onwards. This submission is reasonable enough and hence the learned Single Judge has observed that since there is no reason to discriminate between the two group of employees, the present appellant – original respondent would take necessary steps to give these benefits to the second group of employees from 1.1.1995 as may be permissible under the relevant rules and resolutions.

24. Mr. Joshi has further submitted that the benefit like Leave Travel Concession is concerned, conversion of the said benefits into money was permissible only for a period between 1992 to 1995. Even employees, who are governed under Special Civil Application No.3607 of 1982 were made first time work

charged employees vide judgment and order dated 30.1.1996 with effect from 1.1.1995. Meaning thereby, they would not be even otherwise entitled for benefits of Leave Travel Concession because they have not performed work as work charged employees for three years as on 1.1.1995. He has further submitted that relevant rules of work-charged employees are framed by Government on 12.12.1989. Paragraph – 92.13 clearly provides that Leave Encashment and Leave Travel Concession is permissible to the employee only if he has continuously served as work charged employee for three years.

25. So far as the claim of Leave Encashment is concerned, Mr.Joshi has submitted that there is no dispute and the same is already paid and amount of Rs.3,27,186/- which was unpaid was already paid. He has further submitted that as per present Government Policy, Leave Encashment is required to be given and there

is no dispute on this ground.

26. So far as claim of Public Holidays in cash is concerned, Mr.Joshi has submitted that regular employees of the Government are not entitled for Encashment of Leave on account of discharging duties on public holidays is concerned. Regular employees are given compensatory leave for discharging their duties on public holidays and, therefore, benefit of encashment of leave is not permissible under the Government Resolution dated 31.3.1982.

27. So far as claim of Travel Allowance is concerned, Mr.Joshi has submitted that the same is admissible only in cases where Government employees or workmen are not provided transport facility for going to work. This claim cannot be adjudicated unless evidence to the effect is led before the Court about actual traveling and

employees one spending out of their pocket or government has not provided transport facility at any point of time. Therefore, it would be a question of disputed facts and could not have been granted in omnibus fashion.

28. Even in the affidavit in reply it is clearly stated that Rojandhar who are required to be taken to outside the field, they are shifted through trucks of Road and Building Department and, therefore also question of travelling allowance does not arise. In paragraph-5 of the impugned judgment, the learned Single Judge has modified the original order stating inter alia Travel / Transport Allowance. In this regard, the Transport Allowance was never a part of judgment rendered in Special Civil Application No.3607 of 1982.

29. So far as amount payable under the head of

Group Insurance is concerned, the same is not required to be paid because all employees in Special Civil Applications No.422 and 423 of 1983 have never contributed towards their premium of Group Insurance and in this set of circumstances, the same is not payable under the said head. He has further submitted that from 1998 onwards the same amount is deducted from the wages of concerned work-charged employees and, therefore, all those, who are contributors of the said group insurance scheme, are only entitled for the said benefit and they will be accordingly given benefits as and when said eventuality occurs.

30. So far as the payment under the head of Surrender Leave is concerned, there is no mention about the said head in the judgment rendered in Special Civil Application No.3607 of 1982.

31. Mr.Joshi has further submitted that the

Government Pleader as well as Officers, who were present at the hearing of the application, have agreed so far as calculation part of the benefit is concerned but so far as entitlement is concerned, all the time it was submitted before the learned Single Judge that admissibility of benefits, which are resisted or disputed, is required to be taken a note by learned Single Judge, however, perusing the text of the judgment, it appears that the learned Single Judge has observed that since there was no dispute about the calculation of those and they are due under order in Special Civil Applications No.422 and 423 of of 1983, they are required to be paid to the employees or their heirs as case may be agreed to their individual entitlement at least by 30.9.2006 after undertaking necessary administrative exercise. In this regard he has submitted that parts of the claims, which were permissible, were agreed at that time itself.

However, the claims were never admitted and they were strongly objected because even regular employees are also not getting said benefits.

32. Mr.Joshi has further submitted that in the order in Special Civil Application No.3607 of 1982, which is followed in Special Civil Applications No.422 and 423 of of 1983, it is clearly provided that benefits are to be paid according to the Government rules and regulations. Therefore, merely calculating the same is a part of exercise for granting quantum of claim ought not to have been considered by the learned Single Judge as to admissibility of the claim of the respondents. As a matter of fact, the detailed exercise for ascertaining whether the respondents are entitled for the benefits in the light of relevant Government rules and regulations or resolutions is required to be undertaken. He has further submitted that it

was never intention on the part of the Government Officer when they undertook the exercise of calculation for ascertaining the quantum of claim if the same is admissible to the employees or not.

33. Mr.Joshi has further submitted that all the time Government is bonafide and litigating and claim of the respondent was not otherwise admissible at par with regular employees. More so, some of the claims are not admissible to regular employees too. In these set of circumstances, the learned Single Judge has erred in awarding interest, without adjudicating the admissibility of the said amount under respective heads.

34. Mr.Joshi has further submitted that after the judgment of the Constitutional Bench of Hon'ble Supreme Court in the case of Secretary, State of Karnataka and others Vs. Umadevi and others, reported in 2006(4) SCC,

P.1 claim of parity in the matter of allowance is negatived. Individualization of justice is strongly deprecated on the ground that the same is dehorse the Constitutional Scheme. The Hon'ble Supreme Court has further observed in para-44 of the judgment that, "the concept of 'equal pay for equal work' is different from the concept of conferring permanency on those who have been appointed on ad-hoc basis, temporary basis, or based on no process of selection as envisaged by the rules. The Hon'ble Supreme Court has further observed that this Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the Court could direct that

appointments made without following the due procedure established by law, be deemed permanent or issued directions to treat them as permanent. The Hon'ble Supreme Court has further observed that doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment. He has, therefore, submitted that the order and judgment dated 14.6.2006 passed by the learned Single Judge of this Court in Special Civil Application No.5529 of 2003 is absolutely illegal, unjust, improper and bad in law and hence the same deserves to be quashed and set aside by this Court.

35. Mr.Shalin Mehta, learned advocate appearing for the respondents – original petitioners on

the other hand has strongly objected to the prayer made by the appellants in the present Letters Patent Appeal. He has raised several legal as well as factual issues for consideration of this Court and submitted that the Appeal filed by the Appellants be dismissed in limini.

36. First of all, he has submitted that Special Civil Application No.5529 of 2003 filed by the respondents – original petitioners for implementation of the final judgment and order dated 30.1.1996 passed by the learned Single Judge of this Court in Special Civil Applications No.422 and 423 of 1983 is maintainable at law in view of the observations made by the Hon'ble Supreme Court in the case of State of Haryana & Ors. Vs. M.P.Mohla (2007) 1 SCC (L & S) 303, wherein it is held that if a subsequent cause of action has arisen in the matter of implementation of a judgment, a fresh writ

petition may be filed, as a fresh cause of action is arisen. He has further submitted that it was neither pleaded nor argued by the State Government before the learned Single Judge that Special Civil Application No.5529 of 2003 was not maintainable at law. He has also submitted that no objection to maintainability was raised by the State Government while arguing Special Civil Application No.7703 of 2002 filed by the PWD Employees Union for erstwhile Irrigation Department, as the same was filed for implementation of the final judgment and order dated 30.1.1996 passed by the learned Single Judge of this Court in Special Civil Application No.3607 of 1982. The said judgment is fully implemented and the State Government has paid a sum of Rs.2,11,86,306/- to the concerned employees of the erstwhile Irrigation Department, on whose behalf Special Civil Application No.3607 of 1982 was filed. He has further submitted that it is a

public duty of the State Government to implement all judgments of a Court of law that have achieved finality. Failure of this public duty can always be enforced by a writ of mandamus which would be issued under Article-226 of the Constitution of India. In the present case, the State of Gujarat had failed in its public duty of implementing the decision dated 30.1.1996 passed by this Court in Special Civil Applications No.422 and 423 of 1983. This failure of public duty was sought to be enforced by the respondents by filing Special Civil Application No.5529 of 2003 for a writ of mandamus. He has further submitted that Article-144 of the Constitution of India says that all authorities, civil and judicial in the territory of India shall act in aid of the Supreme Court. In the present case, the Hon'ble Supreme Court vide order dated 9.8.2000 passed in Civil Appeal No.2226 of 1998, affirmed the decision dated 30.1.1996

passed by this Court in Special Civil Application No.3607 of 1982. As a result, the decision dated 30.1.1996 passed by this Court in Special Civil Applications No.422 and 423 of 1983 also got affirmed, no appeal having been filed by the State of Gujarat against the said decision. It was therefore, the bounden duty of the State of Gujarat to act in aid of the Hon'ble Supreme Court's order dated 9.8.2000 which affirmed the decision dated 30.1.1996 passed by the learned Single Judge of this Court in Special Civil Application No.3607 of 1982.

37. The second issue raised by Mr.Mehta is that no adjudication of the claims of the respondents (288 work-charged employees of the Roads & Buildings Department) is required before implementation of the decision dated 30.1.1996 passed by the learned Single Judge of this Court in Special Civil Applications No.422 and 423 of 1983. In support of this,

he submitted that final judgment and order dated 30.1.1996 passed by the learned Single Judge of this Court in Special Civil Applications No.422 and 423 of 1983 has become final. No appeal was filed by the State of Gujarat against the said decision. The sole direction given in the said decision is that, "as in Special Civil Application No.3607 of 1982, the benefits directed in that matter will also be made available to the employees concerned in these two petitions". There is no direction as argued or understood by the State of Gujarat that payment is to be made in accordance with the relevant rules and resolutions. This means that if the benefits described in the final judgment and order dated 30.1.1996 passed by this Court in Special Civil Application No.3607 of 1982 are already made to the employees concerned in that petition, the same benefits are required to be awarded to the employees concerned in Special Civil

Applications No.422 and 423 of 1983. In the case of work-charged employees of the Irrigation Department, State of Gujarat has, after following the relevant rules and resolutions, awarded a sum of Rs.2,11,86,306/- to the employees concerned in Special Civil Application No.3607 of 1982 in full and final implementation of the decision dated 30.1.1996, rendered therein. By the same measure, payment of the benefits described in the decision dated 30.1.1996 passed by this Court in Special Civil Application No.3607 of 1982 is required to be made to the employees concerned in Special Civil Applications No.422 and 423 of 1983. He has further submitted that it is well known doctrine that the executing Court has no jurisdiction to go beyond the decree. He has invited our attention to the decision of the Hon'ble Supreme Court in 2007(4) Scale 233, Vedic Girls Senior Secondary School Arya Samaj Mandir, Jhajar Vs. Smt. Rajwanti & Ors.

Based on this decision he has submitted that if the direction given by the learned Single Judge in Special Civil Applications No.422 and 423 of 1983 is read as a direction to award benefits to the employees concerned in accordance with the prevailing rules and regulations, it would amount to going beyond the terms. The decree in Special Civil Applications No.422 and 423 of 1983 says that as in Special Civil Application No.3607 of 1982 the benefits directed in that matter will also be made available to the employees concerned in this petition.

38. The third issue raised by Mr.Mehta is that benefits under eight heads have been paid to the work-charged employees of the erstwhile Irrigation Department in full and final implementation of the decision dated 30.1.1996, passed by the learned Single Judge of this Court in Special Civil Application No.3607 of 1982. Under the impugned judgment

dated 14.6.2006 of the learned Single Judge in Special Civil Application No.5529 of 2003, benefits under the same heads are awarded to the 288 work-charged employees of the Roads & Buildings Department. He has further submitted that before making payment to the work-charged employees of the erstwhile Irrigation Department in full and final implementation of the decision dated 30.1.1996, passed by the learned Single Judge of this Court in Special Civil Application No.3607 of 1982, a work charge order was issued to each individual employee of Special Civil Application No.3607 of 1982 on 20.4.2002. This work charge order makes a specific reference to the decision dated 30.1.1996 passed by the learned Single Judge of this Court in Special Civil Application No.3607 of 1982. After Special Civil Application No.7703 of 2002 filed for implementation of the decision dated 30.1.1996 in Special Civil Application

No.3607 of 1982 was disposed of vide order dated 7.2.2003, the State of Gujarat made payment to the concerned employees of Special Civil Application No.3607 of 1982 to the extent of Rs.2,11,86,306/- under the eight different heads. A similar work-charge order was issued to each individual employee concerned in Special Civil Applications No.422 and 423 of 1983 on 7.5.2003. This work charge order was issued by the Roads and Building Department makes a specific reference to the final decision dated 30.1.1996 passed in Special Civil Application No.3607 of 1982. This means that the work-charge order is issued for full and final implementation of the decision dated 30.1.1996 passed in Special Civil Applications No.422 and 423 of 1983. Thus, the process of payment undertaken earlier by the State of Gujarat for the concerned employees of Special Civil Application No.3607 of 1982 is required to be repeated

for the concerned employees of Special Civil Applications No.422 and 423 of 1983.

39. The fourth issue raised by Mr.Mehta is that the State of Gujarat cannot flout its own 'work-charge' orders. The work-charge orders issued on 7.5.2003 by the Roads & Building Department to the 288 work-charged employees of Special Civil Applications No.422 and 423 of 1983 unequivocally and specifically describe the benefits payable to the concerned employees in pursuance of the final decision dated 30.1.1996, passed in Special Civil Application No.3607 of 1982. The benefits mentioned in the work-charge order are (1) LTC (2) Leave Encashment (3) Public Holidays (4) Travelling Allowance (5) Group Insurance (6) Medical Allowance and (7) Provident Fund. Preamble of the work-charged order states they are issued by the State of Gujarat for a full implementation of the decision dated 30.1.1996 passed in Special

Civil Application No.3607 of 1982. Even today, these work-charge orders are in operation. Therefore, the State of Gujarat cannot be allowed to flout or defy these very orders that have been issued for a full implementation of the decision dated 30.1.1996, passed in Special Civil Application No.3607 of 1982.

40. The fifth issue raised by Mr.Mehta is that there is a complete and wholesome parity between the work-charged employees of the erstwhile Irrigation Department and the work-charged employees of the Roads & Buildings Department. According to Mr.Mehta, it is admitted by the State of Gujarat that the rules and regulations governing the erstwhile Irrigation Department and the Roads & Buildings Department are one and the same. The State of Gujarat has never pleaded nor argued that the rules and regulations of the Roads & Buildings Department are different

from those of the erstwhile Irrigation Department. Even in the year 1996, when Special Civil Application No.3607 of 1982 concerning the erstwhile Irrigation Department and Special Civil Applications No.422 and 423 of 1983 concerning the Roads & Buildings Department were heard together, the State of Gujarat did not contend that the work-charged employees of the Roads and Buildings Department are required to be treated differently than the work-charged employees of the erstwhile Irrigation Department. Therefore, there is no reason to deprive the respondents of benefits that are awarded to the work-charged employees of the erstwhile Irrigation Department. Mr.Mehta has further submitted that it has also never been the case of the State of Gujarat that the payment of Rs.2,11,86,306 made to the work-charged employees of the erstwhile Irrigation Department, in full and final implementation of the decision dated 30.1.1996 in Special

Civil Application No.3607 of 1982, was an illegality or a mistake. Even today, the work-charged employees of the erstwhile Irrigation Department continue to work as such under the work-charge orders issued to them on 20.4.2002, with all benefits like LTC, Leave Encashment, Public Holidays, Transport Allowance, Medical Allowance, Group Insurance and Provident Fund etc. These very benefits are also described as payable to the work-charged employees of the Roads & Building Department under the work-charged orders issued to them by the Roads and Buildings Department on 7.5.2003. However, these work-charge orders have only remained on paper. There is no justifiable reason advanced by the State of Gujarat for not implementing these work-charge orders dated 7.5.2003, issued by the Roads and Building Department to the 288 work-charged employees of Roads & Buildings Department.

41. The 6th issue raised by Mr.Mehta is that the State of Gujarat has admitted liability to the tune of Rs.25 lakhs for which no adjudication is required. Mr.Mehta has further submitted that the admission is considered to be sufficient proof of liability. The two orders passed by a Division Bench of this Court on 21.11.2006 and 12.12.2006 in contempt proceedings (Misc. Civil Application No.2880 of 2006 in Special Civil Application No.5529 of 2003) clearly record the admission of State liability to the tune of Rs.25 lakhs. This amount is said to constitute the amount payable under the head of Group Insurance and Leave Encashment to the retired / expired employees. Thus, the State of Gujarat has acquiesced to payment under the head of Group Insurance and Leave Encashment to retired / expired employees as directed under the impugned judgment dated 14.6.2006. Therefore, this Court in Appeal ought not to pass any order

contrary to the two orders dated 21.11.2006 and 12.12.2006 or contrary to the State of Gujarat's admission of liability to the tune of Rs.25 lakhs.

42. The 7th issue raised by Mr.Mehta is that the State is supposed to be a model employer and it should not be exploitative. He has submitted that the State of Gujarat has required the respondents herein to initiate one proceeding after another for getting benefits under a judgment that has become final. Firstly, when in the year 2001, Misc. Civil Applications No.413 and 414 of 2001 were filed by the respondents, the State of Gujarat filed an affidavit in those proceedings in February, 2002, stating that a period of six months time was required for a full implementation of the decision dated 30.1.1996 passed in Special Civil Applications No.422 and 423 of 1983. This turned out to be a false assurance. Again,

on 9.4.2004 Special Civil Application No.5529 of 2003 was disposed of on a statement made on behalf of the State of Gujarat that the 288 work-charged employees of the Roads & Buildings Department would be paid as per the earlier order passed in Special Civil Application No.7703 of 2002 dated 7.2.2003. Even this turned out to be a false promise. The respondents were, therefore, required to revive Special Civil Application No.5529 of 2003 by filing Misc. Civil Application No.2014 of 2004. Lastly, though the impugned judgment dated 14.6.2006 in Special Civil Application No.5529 of 2003, this Court directed the State of Gujarat to make payment under various heads latest by 30.9.2006. The present Appeal was filed by the State of Gujarat only on 13.10.2006. A welfare State cannot treat its citizens in such a shoddy fashion. The harassment caused to the respondents is quite evident from the number of litigations that the respondents have been

required to be engaged for implementation of the decision dated 30.1.1996 passed in Special Civil Applications No.422 and 423 of 1983.

43. The 8th issue raised by Mr.Mehta is that calculation of amounts under the various heads directed to be payable under the impugned judgment dated 14.6.2006 is not in dispute. He has submitted that as recorded in para-4 of the impugned judgment dated 14.6.2006 in Special Civil Application No.5529 of 2003, the exercise of computation of the amounts due to the individual employees concerned in Special Civil Applications No.422 and 423 of 1983 was jointly undertaken by the representatives of the PWD Employees Union and the responsible officer of the State of Gujarat, Roads & Buildings Department. This means that there cannot be any challenge on the part of the State to the amounts quantified under the

various heads like LTC, Group Insurance, Leave Encashment to retired / expired employees, Surrender Leave, Transport Allowance and Public Holidays.

44. The 9th issue raised by Mr.Mehta is that this is a fit case for award of interest on the outstanding amounts from 1.9.2000 and penal interest on the outstanding amounts from 1.9.2006. He has submitted that the benefits directed to be paid in the decision dated 30.1.1996 passed in Special Civil Applications No.422 and 423 of 1983 becomes due on 9.8.2000 when the Hon'ble Supreme Court of India dismissed the State's challenge to the decision dated 30.1.1996, passed in Special Civil Application No.3607 of 1982. He has further submitted that the respondents had undertaken litigation after litigation with a view to realize the fruits of the decree dated 30.1.1996 passed by this Court in Special Civil Applications No.422

and 423 of 1983. The first litigation in this respect was started in the year 2001 when Misc. Civil Applications No.413 and 414 of 2001 for contempt were filed by the respondents against the State of Gujarat. He has further submitted that the learned Single Judge has applied the doctrine of restitution to the facts of the present case in awarding interest. For this purpose he relied upon the decision of the Hon'ble Supreme Court in the case of South Eastern Coalfield Ltd. Vs. State of M.P & Ors, reported in (2003) 8 SCC 648.

45. The 10th and last issue raised by Mr.Mehta is that none of the decision cited by the State of Gujarat are applicable to the facts of this case. He has submitted that the decision reported in AIR 2006 SC 1142, AIR 2006 SC 2296, AIR 2006 SC 2609 and AIR 2006 SC 2306 have no application. The ratio that can be culled out from these decisions is

that no one can claim equality in illegality. In the present case the respondents – 288 work-charged employees of the Roads & Buildings Department are claiming certain benefits awarded to the work-charged employees of the erstwhile Irrigation Department on implementation of the decision dated 30.1.1996 passed Special Civil Application No.3607 of 1982. It is nobody's case that the payment made to the work-charged employees of the erstwhile Irrigation Department under various heads was illegally made. It is neither pleaded nor argued by the State of Gujarat that the payment of Rs.2,11,86,306 made to the work-charged employees of the erstwhile Irrigation Department was an illegality or a mistake. This being the position, the respondents cannot be said to claim equality in illegality. Thus, the above cited cases on behalf of the State of Gujarat do not control the present case.

46. Based on the aforesaid submissions legal as well as factual Mr.Mehta has strongly urged that the present Letters Patent Appeal does not deserve even admission much less to grant any relief as prayed for. He has, therefore, submitted that the Appeal may be summarily dismissed with heavy compensatory cost.

47. After having heard Mr.Mihir Joshi, learned Additional Advocate General, appearing with Mr.Apurva Dave, learned Assistant Government Pleader, for the appellant – State of Gujarat and others and Mr.Shalin Mehta, learned advocate appearing for the respondents and after having gone through the Appeal memo, impugned order passed by the learned Single Judge in Special Civil Application No.5529 of 2003 and after having gone through the memo of Special Civil Application as well as documents forming part of the petition and all previous orders of the Court in this

regard, we are of the view that the respondents have claimed parity with the work-charged employees of Irrigation Department on the ground that they are similarly situated persons and hence the benefits given to the employees of the Irrigation Department should have also been given to them. Even Special Civil Applications No.422 and 423 of 1983 were decided by the learned Single Judge of this Court on 30.1.1996 following his own order in Special Civil Application No.3607 of 1982 decided on the same date i.e. 30.1.1996. Since the order and judgment rendered in Special Civil Application No.3607 of 1982 has become final after a long drawn litigation which has reached upto Hon'ble Supreme Court and benefits were given to the employees of Irrigation Department covered under the same judgment, it is not befitting for this Court to discuss anything about it in this judgment despite the fact that the learned Additional

Advocate General has made an attempt that the concerned Official of the State Government has acted without any prior sanction and affidavits were filed at some stage without having approval from his superior and inquiry was ordered to be made against him. Had the case been properly represented right from the beginning, the outcome would have been different. It is also a matter of record that the judgment and order of this Court rendered in Special Civil Applications No.422 and 423 of 1983 decided on 30.1.1996 has become final in this wise that the same has not been challenged by the State Government. No explanation has come on record as to why the said decision has not been challenged in further proceeding despite the fact that the judgment and order rendered in Special Civil Application No.3607 of 1982 was fought upto Hon'ble Supreme Court of India.

48. The question which arose before this Court now in this proceeding is as to whether the above fact debars the State Government from reagitating the issue which is sought to be done in the present case ? If we look at the order passed by this Court in Special Civil Applications No.422 and 423 of 1983 on 30.1.1996, it appears that this Court has, while disposing of the said two matters, simply observed that these two petitions have been heard alongwith the Special Civil Application No.3607 of 1982 filed by the PWD Employees Union and others and since the facts in these three matters are, by and large, identical, it would be proper that the direction given in the earlier matter, viz, Special Civil Application No.3607 of 1982 are applied to the employees covered in these two petitions. The Court has accordingly issued the direction that as in Special Civil Application No.3607 of 1983, the benefits directed in that matter also be made

available to the employees concerned in the said two petitions, viz, Special Civil Applications No.422 and 423 of 1983. While issuing this direction the Court has committed a very serious error on facts by observing that all the employees concerned have been regularised as work-charged employees by Government Resolution passed on 17.10.1988 and they are claiming the effect thereof in terms of monetary benefits. As a matter of fact, there was nothing on record to point out that as on 30.1.1996, the employees covered under Special Civil Applications No.422 and 423 of 1983 have been regularised as work-charged employees by Government Resolution passed on 17.10.1988. All subsequent proceedings which have been culminated into the present LPA, have been based on these erroneous premises. It had not been pointed out by the learned Assistant Government Pleader, who appeared before the learned Single Judge in Special Civil

Applications No.422 and 423 of 1983 that the said resolution does not say anything about issuance of work-charge orders. It appears that he had not been properly instructed in the matter by the Officials, who were briefing or assisting him for the purpose of placing the correct facts before the Court. It is very difficult to express any opinion at this stage as to whether several acts of the learned Assistant Government Pleader or Government Officials of not placing the correct facts before the Court or of conceding something, though the things were quite different, or of not preferring Appeal before the Division Bench, though identical matter on which reliance was placed was seriously agitated, are intentional or otherwise. The Court, however, finds an element of negligence or lack of total due diligence and it is only because of inefficiency coupled with misrepresentation of facts or connivance, the State Government

was put into a precarious position. The issues involved have neither been properly discussed nor adjudicated upon. Even respondents have also remained silent and not pressed into service the immediate implementation of the order and judgment of this Court in Special Civil Applications No.422 and 423 of 1983, till the year 2000.

49. An argument is canvassed that the Special Civil Application No.5529 of 2003 is filed seeking execution of a judgment and decree of the learned Single Judge passed in Special Civil Applications No.422 and 423 of 1983 which provides a fresh cause of action and is therefore maintainable. There is no dispute about this preposition, but if it provides a fresh cause of action, then, in that case the appellant – State of Gujarat has also every right to agitate this issue afresh especially when there was no adjudication at all in proceedings earlier. The earlier decision

appears to have been based either on misrepresentation of facts or connivance of the Government Officials with respondents. In none of the proceeding that followed, including the impugned judgment and order in Special Civil Application No.5529 of 2003, the merits of the matter have been examined or the issues have been threadbare discussed or adjudicated upon. The whole emphasis was on the fact that the order and judgment passed in Special Civil Applications No.422 and 423 of 1983 has been accepted and that the employees of Road & Building Department are on the same footing as the employees of Irrigation Department and that they have been made work-charged employees under the Government Resolution dated 17.10.1988 and that they are also entitled to the benefits which have been given to the employees of Irrigation Department. At no stage, the benefits enumerated and for which the claims have been made, have been separately or

independently examined or adjudicated upon. The Court therefore thinks it just and proper to remand the matter to the learned Single Judge for proper adjudication of all these issues afresh in light of the well established principles of law and justice as discussed by the Hon'ble Supreme Court in some of the recent judgments, reference of which has already been made earlier.

50. The Court has also come across a very serious matter during the course of argument of this LPA Mr. Shalin Mehta, learned advocate appearing for the respondents, has placed on record work-charge orders issued by the appellants alongwith the additional affidavit in reply dated 30.4.2007. He has produced a few speciman copies of the work-charge orders dated 7.5.2003, issued by the Superintending Engineer, Road and Building, Circle, Surat to the 288 daily-waged employees of the Road and Building Department

on whose behalf Special Civil Applications No.422 and 423 of 1983 had been filed by the respondent No.1 – Union. Based on these work-charge orders, it has been contended that these 288 daily-waged employees have been issued work-charge orders way back in the year 2003 for full and final implementation of the final judgment and order dated 30.1.1996 passed by this Court in Special Civil Applications No.422 and 423 of 1983. It has been further contended that the work-charge orders dated 7.5.2003 issued to 288 work-charged employees – Road and Building Department are still in operation and they have only remained on paper. The decision dated 30.1.1996 passed by this Court in Special Civil Applications No.422 and 423 of 1983 has become final, since no Appeal has been filed by the State of Gujarat against the said decision and yet the effect thereof has still not been given to. If we minutely examine these work-charge orders, there is no

reference of Special Civil Applications No.422 and 423 of 1983 in any of these work-charge orders. On the contrary, it refers to the order and judgment passed by this Court in Special Civil Application No.3607 of 1982 which is admittedly in respect of the employees of Irrigation Department. Clause-13 of this work-charge order makes it abundantly clear that these work-charge order has been issued pursuant to the judgment and order passed by this Court in Special Civil Application No.3607 of 1982 and hence except the daily-wagers covered under the said Special Civil Application, no other daily-wagers in the entire State have become work-charged employees or no one were made similar to them. It is also made clear that the said decision should not be considered as a precedent. Mr.Joshi is unable to explain as to how and under whose instructions this work-charge orders have been issued. It is, however shocking and surprising to note that

these work-charge orders are stated to have been issued on 7.5.2003. Special Civil Application No.5529 of 2003 is filed in April 2003 and one of the prayers made in the said petition is with regard to issuance of writ of mandamus or any other appropriate writ, order or direction directing the respondents to forthwith issue the order of work-charge to all 409 daily-wagers of Road and Building Circle, Surat, whose names are mentioned in the list at Annexure-J to the petition. The said petition was initially disposed of on 9.4.2004, thereafter it was revived on 16.3.2005 and thereafter finally disposed of on 14.6.2006. During the course of proceeding before the learned Single Judge, at no point of time it has been stated that the work-charge orders have been issued to 288 daily-wagers of Road and Building Department. Even while disposing of the said petition the learned Single Judge has not given any direction to issue the work-charge

orders. Even before us, at the fag end of the argument, alongwith the additional affidavit, all these work-charge orders have been placed on record. The question, therefore, remains as to how these work-charge orders were got to be issued especially when there was no direction from any competent Court to issue such orders and despite the fact that the prayer claiming this very relief has been pending for adjudication in the writ petition. The further question remains as to why this fact has not been pointed out to learned Single Judge, if the work-charge orders are really issued on 7.5.2003. It appears that the tenor of these work charge orders is exactly similar to the earlier work charge orders and some one in the Department might have played a mischief for the purpose of strengthening the case of the daily wagers of Roads and Buildings Department or for any other extraneous reason best known to him.

51. We are therefore very slow in accepting the genuineness of these work charge orders. In absence of any details or materials, it is not possible for us to arrive at a conclusion that these work-charge orders are genuine, but at the same time, it surely requires a detailed scrutiny and examination and after proper examination, the genuineness or veracity of these work-charge orders can be found out. Even for this reason, the impugned order and judgment deserves to be quashed and set aside and the matter requires remand so as to have the proper adjudication and examination afresh.

52. Even if it is assumed that the employees covered under the Special Civil Application Nos. 422 & 423 of 1983 are entitled to the same benefits as are given to the employees covered under Special Civil Application No. 3607 of 1982, the fact still remains that

while disposing of the said Special Civil Application No. 3607 of 1982, the learned Single Judge of this Court has directed in his judgment and order dated 30.01.1996 that the respondents will take necessary steps to give these benefits to the second group of employees from 01.01.1995 as may be permissible under the relevant rules and regulations. Before granting these benefits, it is therefore incumbent upon the authorities to determine as to whether the benefits claimed by the employees covered under Special Civil Application Nos. 422 & 423 of 1983 are permissible under the relevant rules and resolutions. The learned Single Judge while disposing of Special Civil Application Nos. 422 & 423 of 1983 has not examined the relevant rules and resolutions and the benefits were granted to 288 daily wagers of R & B Department. Even in Special Civil Application No.5529 of 2003, the calculation was placed before the learned

Single Judge subject to the legal contentions of the parties. The question of permissibility of benefits under the relevant rules and resolutions has never gone into by any forum uptill now. The issue is still at large and it has to be adjudicated upon before granting any benefits on the basis of the judgment and order of the learned Single Judge of this Court dated 30.01.1996.

53.It is also necessary to consider the submissions made on behalf of the State Government that certain allowances claimed are not even paid to the regular employees. If this is the position, no Court can give such directions to pay such allowances to the daily wagers who are sought to be converted into work charged employees. It is a matter of ascertainment of facts as to whether such benefits are given to the regular employees and if they are paid to the regular employees again on the ground of parity, whether daily

wagers should be given such benefits. The service jurisprudence has undergone a vast change and simply on the basis of parity, the benefits are not conferred by resorting to and/or by expanding the scope of the constitutional provisions as contained under Article 14 of the Constitution of India.

54. In the case of Secretary, State of Karnataka and others V/s. Uma Devi and others (Supra), the Hon'ble Supreme Court has categorically observed that bypassing of the constitutional Scheme cannot be perpetuated by the passing of orders without dealing with and deciding the constitutional validity of the interim and final orders of the Courts which have issued directions for regularisation, permanent continuation or absorption without referring to the legal position obtaining thereby, and which have been relied on by the respondent employees to claim the same relief.

55. While commenting upon issuance of directions by the Court, Hon'ble Supreme Court has observed in Uma Devi's case that such direction should not be issued presumably on the basis of equitable considerations or individualization of justice. Even equity should be for the teeming millions of this country seeking employment and seeking a fair opportunity for competing for employment and not for the handful of people who have approached the Court with a claim.

56. In the case of State of Punjab Vs. Jagdip Singh, AIR 1964 SC 521, the Constitution Bench of Hon'ble Supreme Court has observed that "in our opinion where a Government servant has no right to a post or to a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status

which it was not entitled to give he will not in law be deemed to have been validly appointed to the post of given a particular status." The status of work-charged employees said to have been conferred on the daily-wagers of R & B Department is required to be examined in light of above observations of the Hon'ble Supreme Court.

57. The Hon'ble Supreme Court has further observed in Uma Devi case that while it might be one thing to say that daily rated workers, doing the identical work, had to be paid the wages that were being paid to those who are regularly appointed and are doing the same work, it would be quite a different thing to say that a socialist republic and its executives, is bound to give permanence to all those who are employed as casual labourers or temporary hands and that too without a process of selection or without following the mandate of the Constitution and

the laws made thereunder concerning the public employment. To grant the status of work charged employees to the daily-wagers of the R & B Department and to issue directions for payment of allowances falls in the second category of cases.

58. One more aspect that arises for Court's consideration as observed in Uma Devi's case, is obviously that the State is controlled by economic considerations and financial implications of any public employment. No direction should be issued by virtue of which the burden becomes so heavy that the undertaking itself may collapse under its own weight. The Court ought not to impose the financial burden by virtue of which, the direction issued may become counter productive.

59. The Hon'ble Supreme Court has also taken note of the fact in Uma Devi's case that High

Courts acting under Article-226 of the Constitution of India, should not ordinarily issue directions for absorption, regularisation or permanent continuance, unless the recruitment itself was made regularly and in terms of Constitutional scheme. Merely because an employee had continued under the cover of an order of the Court, he would not be entitled to any right to be absorbed or made permanent in the service. The concept of equal pay for equal work is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis or based on no process of selection as envisaged by the rules. No right can be founded on an employment on daily-wages to claim that such employee should be treated on a par with a regularly recruited candidate and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work.

60. While referring to the judgment of the Hon'ble Supreme Court in Uma Devi case, Mr. Shalin Mehta has submitted that in this very judgment it was made clear that regularisation if any already made but not subjudice need not be reopened. His argument was that the judgment and order rendered in Special Civil Applications No.422 and 423 of 1983 has become final and it cannot be said to be subjudice. It is not required to be reopened, based on Uma Devi's judgment. This argument is not tenable for the reasons already stated earlier. The claim made therein will have to be examined in light of law laid down by the Hon'ble Supreme Court in Uma Devi's case. All those decisions which run counter to the principle settled in Uma Devi's case, or in which directions running counter to what it has been held therein will stand denuded of their status as precedents. We are therefore, of the view that the status

of work charged employees conferred on the daily-wagers of R & B Department on the basis of the decision in Special Civil Application No.3607 of 1982 run counter to the principles laid down in Uma Devi's judgment and, therefore, their claim will have to be independently examined as decision in Special Civil Application No.3607 of 1982 stands denuded of its status as precedent.

61. The principle is reiterated time and again by the Hon'ble Supreme Court. In the case of State of Bihar and others V/s. Kameshwar Prasad Singh and another, AIR 2000 SUPREME COURT 2306, the Hon'ble Supreme Court has held that the concept of equality as envisaged under Art. 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals other

cannot claim the same illegality or irregularity on ground of denial thereof to them. Similarly, wrong judgment passed in favour of one individual does not entitle others to claim similar benefits. It is true that the decision rendered by the learned Single Judge of this Court in Special Civil Application No.3607 of 1982 is not the subject matter of the present proceedings. The said decision, however, does not preclude the authority as well as the Court to examine as to whether the allowances claimed by the employees of Roads & Buildings Department in the present proceedings are legally permissible and the same are in accordance with the relevant rules and resolutions. After examining the relevant rules and resolutions, if the authority finds the same impermissible, it can certainly deny and the Court can certainly come to the conclusion that the same are contrary to the relevant rules and resolutions. The whole emphasis is

to undergo this exercise before granting any allowance to the present respondents.

62. In the above view of the matter, we are of the firm view that the matter requires reconsideration and proper justice would be done to the parties only if we remand the matter to the learned Single Judge for redeciding the entire issue afresh in light of the settled legal principles as well as the factual data that may be made available after undertaking the task of reconsideration. For this purpose, following aspects are required to be gone into.

A) It has to be established as to whether the Resolution dated 17.10.1988 confers the status of work charged employees to the daily wagers of R & B Department.

B) It is also required to be examined as to whether work charge orders are, in fact,

issued by the R & B Department on 07.05.2003 as contended before the Court. Even if they are issued whether there was any proper sanction behind it. It is also to be examined as to why the fact regarding issuance of the work charge orders was not placed before the Court earlier and despite there being no direction of any competent Court, why such orders are issued especially when the petition containing this prayer was still pending before the learned Single Judge. It is also to be examined as to whether any extraneous consideration has played its role behind issuance of such work charge orders.

C) It is also to be ascertained as to whether all or any of the allowances claimed under the different heads are in accordance with the relevant rules and resolutions and whether regular employees are granted such benefits and if they are granted whether the

daily wagers are automatically entitled to the said benefits.

63.The learned Single Judge will also take into consideration the implication of granting such benefit to the alleged work charge employees of Roads and Buildings Department on the similarly situated persons of other departments and its impact of financial burden on the State ex-chequer.

64.The learned Single Judge would also address himself with regard to the various contentions raised by the parties before this Court and which have been reproduced in nut shell in the preceding paragraphs of this judgment and over and above this, the submissions which may be made and contentions which may be raised before him at the time of deciding the issue afresh and take appropriate decision in accordance with law and mould the relief accordingly.

65. Before parting, it is made clear for removal of any doubt that payments already made to the 288 employees of R & B Department should not be recovered from them by virtue of quashing and setting aside the impugned order and judgment and remanding the matter before the Learned Single Judge for deciding afresh. It is further made clear that since the question of 121 employees of R & B Department who are not covered under the order and judgment dated 30.01.1996 in Special Civil Applications No.422 & 423 of 1983 is separately directed to be considered in LPA Nos. 374 to 495 of 2007, which are being disposed off by separate order and judgment of even date, the quashing and setting aside of the impugned judgment and order in Special Civil Application No. 5529 of 2003 would not make any difference. We have not expressed any opinion on the issue of chargeability of interest on the payment allegedly not made in

time, in view of quashing and setting aside the impugned judgment and order. Parties are at liberty to plead their case before the learned Single Judge in this regard.

66. Subject to the aforesaid directions and observations, the impugned judgment and order passed by the learned Single Judge in Special Civil Application No. 5529 of 2003 is hereby quashed and set aside and the matter is remanded to the learned Single Judge for deciding it afresh on merits and in accordance with law as well as relevant rules and resolutions. This appeal is accordingly allowed to the aforesaid extent for statistical purpose without any order as to costs.

67. Since appeal is disposed of, Civil Application does not survive and it is accordingly disposed of.

(A. M. Kapadia, J.) (K. A. Puj, J.)

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